



Lamoine Board of Selectmen

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Minutes of October 30, 2008

Chairman Jo Cooper called the meeting to order at 7:06 PM

Present were: Selectmen S. Josephine Cooper, Brett Jones, Richard Fennelly Jr., Cynthia Donaldson; Administrative Assistant Stu Marckoon and Robert Sharkey.

Expenditure Warrant 9 – Selectmen signed warrant 9 for \$546,229.00. Stu noted that \$500,000 was a transfer into the investment management account.

School Bond Matters – Stu reported that the bond counsel for the school department had dropped the ball on last January's vote to increase the bond, and several documents needed to adjust the bond figure had not been sent or completed. He said the Board has those now, and several votes need to be adopted. Brett asked if the terms were the same as the previously approved bond. Stu said they were, just the amounts were different.

Jo moved to approve the following votes as suggested by bond counsel:

VOTED: That in connection with the School Revolving Renovation Fund minor capital project previously approved by Town of Lamoine (the "Governmental Unit") in accordance with applicable law, the Governmental Unit be and it hereby is authorized to execute and deliver a Loan Agreement between the Maine Municipal Bond Bank (the "Bond Bank") and the Governmental Unit to effect a loan from the Bond Bank in the principal amount of up to \$273,700, of which \$82,110 of principal is forgiven by the Bond Bank, and which Loan Agreement shall be substantially in the form presented at this meeting, and such Loan Agreement hereby is approved in all respects, for the purpose of financing the School Revolving Renovation Fund minor capital project, as previously approved by the voters of the Governmental Unit by referendum election held on January 29, 2008 (the "Project").

VOTED: That under and pursuant to the provisions of 30-A M.R.S.A. §5772, and Title 30-A M.R.S.A. § 5953-E and § 6006(F), the Chair of the Board of Selectmen and the Treasurer of the Governmental Unit be, and hereby are authorized to borrow in the name and on behalf of the Governmental Unit the sum of up to One Hundred Ninety-One Thousand Five Hundred Ninety Dollars (\$191,590) from the Bond Bank and, in connection therewith, the Chair of the board of Selectmen and the Treasurer be and they are hereby authorized to issue general obligation securities (bonds or notes) of the Governmental Unit in an original principal amount of up to One Hundred Ninety-One Thousand Five Hundred Ninety Dollars (\$191,590), payable WITH NO INTEREST in ten equal annual installments of principal, and to execute and deliver such general obligation bonds or notes (as so executed and delivered, the "Bond") in registered form under the seal of the Governmental Unit and as attested by the Clerk, which Bond shall be dated on or about November 11, 2008, and be in substantially the form presented to this meeting, with such changes therein not contrary to the

general tenor thereof as the Chair of the Board of Selectmen and the Treasurer may approve, the execution and delivery thereof to be conclusive evidence of such approval.

VOTED: That the Chair of the Board of Selectmen and the Treasurer be, and each of them acting singly hereby is authorized in the name and on behalf of the Governmental Unit to execute and deliver the Loan Agreement, an Assignment of monies transferred by the State of Maine to pay for Project costs, and such other instruments, documents, certificates and agreements, and to take or cause to be taken such further actions for and on behalf of the Governmental Unit as may be necessary, convenient or appropriate to effect the transactions contemplated by the foregoing votes and the documents referenced therein, and that the Clerk of the Governmental Unit be and hereby is authorized to attest to the foregoing and attach the Governmental Unit's seal to any of the foregoing.

Richard 2nd. **Vote in favor was 4-0.**

Incident at Town Hall – October 27, 2008.

Stu reported he'd prepared a written report in regard to an encounter he'd had at the town hall with Colene and Robert Sharkey. Jo said the Board had not had time to read it, and Selectmen reviewed the report. Cynthia asked to talk about the ground rules for discussion and said some parameters are needed. Jo said she was not sure what particular action might be taken, but some of the discussion ought to be in executive session. Brett said there might be some personnel issues surrounding conduct of a town employee, and possibly some legal issues, and he wasn't sure that should be discussed in public session. Richard said he agreed that a portion of the matter involving a town employee should be in executive session. He said he wasn't sure what was appropriate to discuss in a public forum, but his instincts are that the part that doesn't involve an employee should not be discussed in executive session. He said part of the incident was not precipitated by the employee, and that leaves it open for discussion. He said the only part that would not be in public would be a discussion of the job performance.

Robert Sharkey asked if the Board was discussing the case in which his wife was involved. He said he would like to discuss that.

Mr. Sharkey said he got a call the previous Saturday morning at 9AM advising that the fire department had submitted a petition to put another fireman on the Board. He said he had just gotten out of bed, and after a discussion hit the road with a rapidly made petition. He said they did not notify the person they were intending to nominate for the ballot of the petition effort, and that he spelled the person's name wrong on the petition. Mr. Sharkey said they went to several houses, the transfer station, and the Lamoine General Store. He said they

passed the petition around and people signed. He said they came to the town office and gave the petition to (town clerk) Jennifer Kovacs.

Mr. Sharkey said afterwards they scanned the petition and saw that one name would be invalid because they knew he had moved away from town. He said that Mrs. Sharkey talked to the individual and he confirmed that he could not vote because he had registered to vote elsewhere. Mr. Sharkey said he did talk with Mr. Colella (the person nominated on the petition) and Mr. Colella was not sure if his wife would approve of him running for office. Mr. Sharkey said they sent two e-mails to the town office on Saturday afternoon asking to withdraw the petition.

Mr. Sharkey said that at 8:15 Monday morning, his wife Colene came to the town office and asked for the petition. He said Mr. Marckoon gave it to her; she started to fold it up and put it in her pocketbook, and attempted to leave. Mr. Sharkey said Marckoon grabbed Mrs. Sharkey's arm tightly and said she couldn't leave. Mr. Sharkey said Mrs. Sharkey told Mr. Marckoon to stop, and she made a phone call to Mr. Sharkey. Mr. Sharkey said he told Mrs. Sharkey to get out of the town office as fast as she could. He said Mrs. Sharkey came home and was visibly shaken. He said he thinks that it's true that Mr. Marckoon grabbed her.

Mr. Sharkey said he took a name off the petition and put it in his pocket and came back to the town office. He said that when he arrived, Mr. Marckoon went to his office and he approached and asked to close the door, and Mr. Marckoon yelled no, and Mr. Sharkey said he was leaving. He said Mr. Marckoon said he would have Mrs. Sharkey arrested for stealing, and Mr. Sharkey said he would have Mr. Marckoon arrested, and he would find out what the charge was. Mr. Sharkey said he spoke with the clerk working the counter and left the original copy of the petition on the counter.

Mr. Sharkey said Mrs. Sharkey showed him bruises on her arm and he sent her to the doctor, and the bruises were all recorded in the doctor's office. Mr. Sharkey said he thought they had the right to remove the document because it had not been validated or invalidated. He said the document belonged to them. He said Mr. Marckoon gave the document to Mrs. Sharkey and she attempted to leave.

Mr. Sharkey said a deputy sheriff came to his yard, and he took him into the house. He said he told Mrs. Sharkey not to answer any questions because it appeared as if the town was going to take them to court. He said Mrs. Sharkey is thinking about charging Mr. Marckoon with assault or kidnapping. He said it was not a laughing matter and said no one was to touch his wife ever again.

Jo said she had listened to what Mr. Sharkey had to say carefully. She asked what action he wanted the Board to take. Mr. Sharkey said he was told by phone that the Board was going into executive session to discuss the incident. He said he wanted to tell their side of the story. Jo said they didn't wish to discuss somebody without them being present. She said she understood that Mr. Sharkey is protecting his wife, but she would be welcome to speak with the Board. Mr. Sharkey said he wanted the Board to have the information and make the proper decision.

Brett said this isn't something being decided by the town. He said the District Attorney will make a decision as it's a criminal matter and the DA will go down whatever road is appropriate. Mr. Sharkey said it appears the town has decided this is a criminal matter. Jo said someone with expertise will decide that. She said she was reluctant to pursue any legal discussion. She said her concern is that people are treated civilly at the town office, and that people don't try to bypass the law. She said she appreciated Mr. Sharkey coming to meet with the Board. She said the board would go ahead and decide what action needs to be taken, and it will be done the right way. Mr. Sharkey said if it's in the DA's hands, and he's heard the story from Mr. Marckoon, he could determine what will happen. Jo said the Board would determine if there was something wrong at the town hall. She said she wasn't sure what the Board is supposed to be doing, but they'll try to make the right decision.

Mr. Sharkey said it appears as if the cart is coming before the horse, because the matter is now in the court system for discussion. Jo said the other side of the story has to do with policy and procedures. She said the potential criminal matter is in the hands of the DA at this point. She said incidents like this are why the town office was renovated. She suggested it might be wise for a communications system. She said her concern is that it's not just one employee, but it could be anyone and there should be a proper way to handle such situations. She said she was trying to be straight with Mr. Sharkey. She said she regretted the incident happened. She noted that copies of the proper petition were available at the town office for a long time.

Richard asked if he understood correctly that Mr. Sharkey said he circulated the petition at the store and came up to the town office and submitted it. Mr. Sharkey said he came back with 25-signatures after first seeing there were 24 names on the petition. Brett asked if Doug Coleman was at the store when he went in. Mr. Sharkey said no, he did not see him. He said he had heard that Mr. Coleman had moved. He said this whole thing is silly, and the petition would have been invalidated. He said Mr. Marckoon doesn't miss too much of things he's opposed to. Jo said whatever motives Mr. Sharkey attributed to Mr. Marckoon; he does a good job for the Board. Mr. Sharkey thanked the Board for listening.

Jo said she had a couple of procedural concerns, and it seemed the discussion ought to be what policy to follow on making decision in urgent circumstances. Richard said it seems that there should be some predetermined procedures because there might be an uncertainty on how to proceed. He said a written procedure would clearly spell that out. Brett said it would be impossible to map out every instance, and it might be better to let Stu use his best judgment. He said it might not be necessary for him to contact the board first, as it might hamstring the employees. Richard said he was not thinking about a finely worded procedure. He said he was concerned about having Stu reach one Selectman who was making a decision individually on how the board would proceed. He said he agreed there was a potential violation of the law in this case. He said if Stu understands the procedure, he could call the town attorney. Jo said she agreed, but there was another element involved here, and that was the interaction with the individual. There was a brief discussion. Jo said there was no question that a person in that position could make their best judgment and keep the board informed as soon as possible. Brett said in regard to this event, instead of having Stu contact the board; he should have called the Sheriff's Department first. He said the 2nd step would be to inform the board. Jo said she supports the idea of communicating with the board, but not necessarily by e-mail, as not everyone sits by their computer. There was a brief discussion about public documents.

Jo said she has a concern about the board communicating with one another by e-mail, and it's human nature to react to what has been said. She said the Lamoine Board is as transparent as possible and is not trying to play an e-mail game. She the more proper things for e-mail are reminders that the Board is having a meeting. She said that's an efficient way to communicate. Brett asked if the board was in violation of public meeting rules by communicating via e-mail.

Richard said he wouldn't say that this situation had put the public welfare at risk. He said if there is an immediate threat to life or property the Sheriff's office should be called. He said if there is no threat, and an employee is looking for guidance, the town attorney should be called. Brett said he had no problem with that. He said someone impartial would end up looking at the situation either way. Richard said the Board members are not lawyers. He said the best place to go is to the people with answers. Jo said she advised Stu to call the town attorney and the town attorney advised Stu to call the Sheriff. She said if that's the way to go, that's fine. A brief discussion about ex-parte communications followed.

Jo said she was uncomfortable about board members talking with each other or via e-mail outside of a formal meeting. Cynthia noted the handbook for municipal officials said they need to be very careful in reference to communications. She

said what pulled the Board into the e-mail communication was the part of the original e-mail welcoming input. Jo said the Board is held to high standards. She said there could be a mis-perception, either through conversation or from folks watching on TV, and said the Board is not trying to pull anything over on anyone. She said she did not feel comfortable with the back and forth communications via e-mail.

Richard said a procedure to help deal with difficult situations might help prevent problems, and that could be discussed at a regular or special meeting. He said in instances where Stu has contacted just the chair of the Board for guidance, in a non-life-threatening situation, he should wait for a response from the entire board. He said one member of the board might give direction that the whole board might not agree with. Brett said he was curious about what powers the Board chair has. He said Jo has the discretion to set the agenda. He said he looked up the powers of the chair, and there is nothing in the Board's documents regarding this type of issue. He said a procedure could be set up to contact the Board in an emergency. Richard said the Chair has responsibilities but no greater authority than any other board member.

Cynthia said this appears to be a supervisory issue. She said the Board members are supervisors, and the person to go to is the head of the supervisors. She said it would seem that the position to go to would be Jo in terms of a procedural issue. Richard said he would agree with that if the non-chairs provided the employee evaluations to the chair, and the chair went over the job reviews with the employees. A short discussion followed.

Brett said he was curious to know what was allowed to be communicated via e-mail. Stu said e-mail communications are allowed, but no decisions can be made via e-mail, and all the e-mail communications are public documents. Brett suggested a workshop could be held regarding a policy.

Other Business

Cynthia reminded the Board that there is a public hearing on Monday the 3rd regarding the school consolidation question. She said it would be at 6:30 PM at the school. She said she would like to see as many people as possible attend. She said the vote is December 9th, and encouraged people to come and ask questions. She said the hearing process is confusing as the reorganization law says the Regional Planning Committee (RPC) must hold a public meeting to present the plan. She said the regular statutes require a public hearing prior to the referendum vote. She said this is a combination of the two. She said the hearing has to be opened by a Selectman, and asked Jo if she would do that, then turn the hearing over to the RPC. Jo said she would.

Cynthia asked if the Selectmen wanted to play a particular role. She said there would be a presentation by the RPC and a chance for questions. She asked if the Selectmen had any particular questions. Richard said this really isn't the Selectmen's game; it's more a function of the school committee and RPC. Jo said she could call the meeting to order and open it up, and make sure the hearing is properly conducted. She said the Selectmen are not experts on the subject. Richard said he's never been bashful to say what he thinks. There was a discussion about who would facilitate the meeting.

A brief discussion followed about an article regarding consolidation in the Bangor Daily News earlier in the week.

Jo moved to go into executive session pursuant to 1MRSA §405(6)(a) to discuss a personnel matter. Richard 2nd. **Vote in favor was 4-0 at 8:05 PM** Out at 8:28 PM.

There being no further business, the meeting adjourned at 8:28 PM.

Respectfully submitted,

Stu Marckoon, Adm. Asst. to the Selectmen